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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

Application No. : 10/681,748
Confirmation No. : 8134
Applicant : Frederick A. Parker
Filed : Oct. 9, 2003
Title : Fluid control system for precisely controlling
a flow of fluid
TC/A.U. : 3753
Examiner : R. Krishnamurthy
Docket No. : PARK3054/FJD
Customer No. : 23364

REQUEST FOR REHEARING

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

INTRODUCTORY COMMENTS

This Request is being filed pursuant to the provisions of 37 CFR 41.52.

The Decision of October 30, 2008, issued by the Board raises several issues that require commentary.

(1)

In finding of fact 8. (Pg. 6 of the Decision) the Board states: "Balazy describes.....a system of controlling the rate of gas flow using pressure regulation as an alternative to an on/off control valve," citing col. 1, line 67 to col. 2, line 1 of Balazy.

What Balazy actually states in col. 1, line 67 to col. 2, line 1 is the following: "controlling the rate of fluid, and particularly gas flow which uses pressure regulation ***rather than a control valve***" (emphasis added).

The Board appears to take the position that col. 1, line 67 to col. 2, line 1 of Balazy creates an equivalency between a pressure regulator and an on/off control, valve, so that one can be used in place of the other.

It is respectfully submitted that the actual quote leads us in the opposite direction, i.e., the two are not equivalent. Using one does not necessarily suggest to one skilled in the art that the other can be used instead.

Then the Board states under finding of fact 8.1.) (Pg. 6 of the Decision) that: Balazy does not preclude the use of a control valve," citing col. 2, lines 39 - 46 of Balazy. Col. 2, lines 39 - 46 do not, it is respectfully submitted, equate a control valve and a pressure regulator. It merely advises the reader that a control valve may be used in a preferred system, among a number of other components, but not that the suggested control valve is equivalent to the pressure regulator.

There are literally hundreds, if not thousands of different control valves. For example, control valves can be ball valves, gate valves, globe valves, butterfly valves, and on and on. Does that mean that when one particular valve is identified that the

identifier is telling us that one could use any other valve? Certainly not. The environment in which the valve is used, the function to be performed by the valve are certainly factors to consider. In many instances, one valve may be as good as another. But not always. The temptation to view all valves as equivalent is there, but the temptation must be resisted, and common sense applied. See, ***KSR International Co. v. Teleflex Inc.*** 127 Sct 1727 (Sup.Ct 2007).

Those skilled in the valve art must assuredly have the knowledge of the various types and kinds of valves. But those skilled in the valve art do not have knowledge of the equivalence of any one of the many valves. That knowledge must come from the art itself, and that is lacking here.

(2)

The Board states on pg. 8 of the Decision that: "...the Examiner's position that Balazy's pressure regulator satisfies the recited valve (claim 1) and control valve (claim 11) limitations is reasonable in view of how one of ordinary skill in the art would understand the workings of and relationship between a valve, control valve, and pressure regulator," citing for support "(Facts 3 - 7)." Why? Facts 3 - 7 merely discuss generalities; for example, "[a] pressure regulator is a device used to reduce a variable high inlet pressure to a constant lower outlet pressure." How does this knowledge lead to the present invention? It doesn't. Balazy's pressure regulator is not a control valve, and Facts 3 - 7 do not negate that assertion.

(3)

The Board is asserting that since the definition of "valve" and "control valve" are not found in the specification, the examination process has a free hand to asserted equivalents of various structural elements in order to achieve a rejection. But that is not what a "broad construction" during examination means. Common sense must still be applied, and when it is, one finds that appellant's position is not so unreasonable and in accord with accepted law.

The Board is urged to reconsider its decision in view of the above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Felix J. D'Ambrosio', with a long horizontal flourish extending to the right.

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Reg. No. 25,721

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